

JUL 01 2011

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

In the matter of:

) **Stipulation and Order on Settlement Offer**

No. R4-2008-0044-M

) **Mandatory Minimum Penalty**

**D.R. Horton Los Angeles Holding
Company, Inc.**

) **for Violation of**

) **California Water Code**

Oly Mandalay Bay Seabridge

) **And**

**Wooley Road & Victoria Avenue
Oxnard, CA 93035**

) **Order No. R4-2003-0141 (NPDES No. CA0064505)**

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The Regional Water Quality Control Board, Los Angeles Region (Regional Board) has found and determined that D.R. Horton Los Angeles Holding Company, Inc. (Permittee) violated requirements contained in Regional Board Order No. R4-2003-0141 (NPDES No. CA0064505), and California Water Code (CWC) § 13376, for which the Regional Board may impose administrative civil liability under CWC § 13385.
2. As required by the Clean Water Act (33 U.S.C. § 1251 et seq.), the Regional Board issued a National Pollutant Discharge Elimination System (NPDES) Permit to the Permittee authorizing discharge of treated groundwater during the construction of multi-family residences near the Seabridge at Channel Islands Harbor.
3. CWC § 13385(h) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious violation. Pursuant to CWC § 13385(h)(2) "a serious violation is defined as any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant by 20 percent or more, or for a Group I pollutant by 40 percent or more. Appendix A of Part 123.45 of Title 40 of the Code of Federal Regulations specifies the Group I and II pollutants."
4. Total suspended solids is a Group I pollutant. Copper, mercury, selenium, and zinc are Group II pollutants.
5. CWC § 13385(i) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each violation whenever the Permittee violates a waste discharge requirement effluent limitation in any period of six consecutive months, except

that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations within that time period.

6. CWC § 13385.1(a)(1) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for a "serious violation" defined by that section as "a failure to file a discharge monitoring report required pursuant to Section 13323 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance limitations contained in waste discharge requirements that contain effluent limitations." This section applies to violations occurring on or after January 2004.
7. A portion of the penalty not to exceed fifteen thousand dollars (\$15,000) plus fifty percent (50%) of the penalty amount that exceeds fifteen thousand dollars (\$15,000) may be directed to a Supplemental Environmental Project (SEP) pursuant to CWC § 13385(l).
8. The maximum amount of administrative civil liability assessable pursuant to CWC § 13385(c) is \$10,000 per day of violation plus \$10 times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
9. On April 3, 2008, the Executive Officer of the Regional Board terminated the Permittee's coverage under Board Order No. R4-2003-0141 and NPDES Permit No. CA0064505 for the subject site except for enforcement purposes. The violations described herein occurred while the coverage was in effect.
10. On September 26, 2008, the Chief Prosecutor issued the Permittee Settlement Offer No. R4-2008-0044-M to participate in the Expedited Payment Program (Settlement Offer)(Exhibit "A"). The Settlement Offer included an NOV notifying the Permittee of one-hundred-and-eighteen (118) effluent limit violations and eleven (11) late reporting violations that occurred between May 2004 and April 2007. These violations were assessed mandatory minimum penalties for a total penalty of \$387,000.
11. Since issuance of Settlement Offer No. R4-2008-0044-M, Regional Board enforcement staff determined that nine (9) late reporting violations listed in the Settlement Offer are not subject to mandatory minimum penalties because there were no discharges of wastewater from the facility during the period covered by those reports. Accordingly, these violations were removed from the Settlement Offer.
12. One-hundred-and-twenty (120) violations of Order No. R4-2003-0141 was noted in the Permittee's self-monitoring reports during the period March 2005 through April 2007. These violations include two (2) reporting violations and one-hundred-and-eighteen (118) effluent limit violations for total suspended solids, turbidity, copper, mercury, selenium, and zinc. The violations are identified in Exhibit "B" attached hereto and incorporated herein by reference.

13. Solely to resolve by consent and without further administrative proceedings the alleged violations of CWC §13385 set forth in Exhibit "B", the Chief Prosecutor and the Permittee have agreed to the imposition of \$360,000 in mandatory minimum penalties against the Permittee in accordance with the terms provided herein.

STIPULATIONS:

The Parties stipulate to the entry of this Order as set forth below:

14. The Chief Prosecutor and the Permittee agree that the Regional Board has jurisdiction to enter this Stipulation and Order on Settlement Offer No. R4-2008-0044-M (the Stipulated Order), and that the Permittee is subject to the Regional Board's jurisdiction.
15. The Chief Prosecutor and the Permittee agree that this Stipulated Order has been negotiated in good faith in compliance with the requirements of CWC § 13385(h) requiring certain mandatory minimum penalties and that entry of the Stipulated Order shall not constitute an admission by the Permittee of any violation alleged by the Chief Prosecutor, nor of any statute or rule other than the Regional Board's jurisdiction over this matter, with the understanding that in the event of any future enforcement actions by the Regional Board staff, this Order may be used as evidence of a prior enforcement action consistent with CWC section 13327.
16. The Permittee shall be subject to administrative civil liability in the total amount of \$360,000. The civil liability includes the payment of \$172,500. In lieu of assessing penalties, \$187,500 of liability will be suspended pending completion of a SEP. The cost of the SEP will be referred to as the SEP Amount and the SEP obligations and suspended liability will be discharged in accordance with paragraph 19 below.
17. The Permittee shall pay \$172,500 to the State Water Pollution Cleanup and Abatement Account, and reference the Stipulated Order, within 30 days of receipt of the Stipulated Order executed on behalf of the Regional Board. The payment shall be submitted to the Regional Board at the following address:

Mr. Chris Lopez
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013
(213) 620-6368
chlopez@waterboards.ca.gov

18. In addition to payment of the administrative civil liability in accordance with paragraph 17 above, the Permittee shall pay the Regional Board staff costs incurred for overseeing the implementation of the SEP (Oversight Costs). Payment of Oversight Costs shall be made within 30 days of receipt of the Stipulated Order executed on behalf of the Regional Board to the Cleanup and Abatement Account at the address specified in

paragraph 17 above. The amount of Oversight Costs anticipated for the SEP is addressed in paragraph 19.D. below.

19. The Permittee agrees to discharge its SEP obligations as described in paragraphs A-K below.

A. DESCRIPTION OF THE SEP

The Permittee will contribute the SEP Amount to the Ventura County Environmental Health Division, (the Implementing Party), within 30 days of receipt of the Stipulated Order executed on behalf of the Regional Board, to assist with the Ocean Water Quality Monitoring Program (the OWQM Program). The OWQM Program monitors ocean water quality at forty beaches in Ventura County affected by permitted water discharges such as those from the Permittee and makes the results public through internet postings, beach advisories and the reporting of results to government organizations including the Regional Board.

The OWQM Program has a nexus with the alleged violations because it serves to reduce overall public health risks associated with discharges that affect ocean water quality and provides water quality monitoring data used to advise the public of health risk and determine when beach closures are necessary.

The Scope of Work, Schedule for Performance, and Milestones for the SEP portion of the OWQM Program and additional details can be found in the attached SEP Workplan, Budget and OWQM Program Plan (Exhibit "C") which is incorporated in and part of this Stipulated Order (the Project).

B. REPRESENTATION OF THE IMPLEMENTING PARTY

As a material consideration for the Regional Board's acceptance of this Stipulated Order, the Implementing Party represents that it will: (1) utilize the funds provided to it by the Permittee to implement the SEP in accordance with the Schedule for Performance set forth in Exhibit C; and (2) provide certified, written reports to the Regional Board and the Permittee consistent with the terms of this Stipulated Order detailing the implementation of the SEP. The Implementing Party understands that its promise to implement the SEP, in its entirety and in accordance with the Schedule for Performance, is a material condition of this settlement of liability between the Permittee and the Regional Board. The Implementing Party agrees that if it has received the SEP Amount from the Permittee, then the Regional Board has the right to require the Implementing Party to implement the SEP or be held jointly and severally liable to pay the SEP Amount or portion thereof as an administrative civil liability in accordance with the terms of this Stipulated Order. The Implementing Party agrees to submit to the jurisdiction of the Regional Board to enforce the terms of this Stipulated Order and the implementation of the SEP.

C. PUBLICITY

Whenever the Permittee or its agents or subcontractors or the Implementing Party publicize one or more elements of the SEP, they shall state in a **prominent manner** that the Project is being undertaken as part of the settlement of an enforcement action by the Regional Board against the Permittee.

D. REGIONAL BOARD OVERSIGHT COSTS

Permittee shall pay \$3000.00 in addition to the administrative civil liability to the State Water Pollution Cleanup and Abatement Account to cover the Regional Board's estimated costs of overseeing the procedural implementation of the SEP.

E. SUBMITTAL OF PROGRESS REPORTS

The Implementing Party shall provide quarterly reports of progress to the Designated Regional Board Representative, the Division of Financial Assistance at the State Water Resources Control Board, and the Permittee according to the schedule below. The quarterly reports shall include a list of all activities on the SEP since its adoption, all SEP activities during the quarter, an accounting of funds expended, and the proposed work for the following quarter. The first report is due on the 1st day of the second month of the quarter after the project commences.

<u>Reporting Period</u>	<u>Report Due Date</u>
January – March	May 1
April – June	August 1
July – September	November 1
October – December	February 1

F. SITE INSPECTIONS

The Implementing Party shall permit inspection of the Project by the Regional Board staff and the Permittee at any time without notice during normal business hours.

G. AUDITS AND CERTIFICATION OF ENVIRONMENTAL PROJECT

1. Certification of Completion

Within 30 days of completion of the SEP, the Permittee shall submit a certified statement of completion of the SEP (Certification of Completion). A responsible corporate official representing the Permittee shall submit the Certification of Completion under penalty of perjury, to:

Mr. Chris Lopez
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013
(213) 620-6368
chlopez@waterboards.ca.gov

the Designated Regional Water Board Representative

And

SEP Reporting
C/O Toru Okamoto
Division of Financial Assistance
State Water Resources Control Board
1001 I Street, 17th Floor
Sacramento, CA 94244

the State Water Resources Control Board's Division of Financial Assistance.

The Certification of Completion shall include following :

i. Certification of Expenditures

Certification documenting all expenditures by the Permittee and/or Implementing Party. For the Permittee, the expenditures may be limited to documentation of payment of the SEP Amount to the Implementing Party. For the Implementing Party, the expenditures may include external payments to outside vendors or contractors implementing the SEP. If applicable, the expenditures may include the costs of internal Environmental Management resources and internal Business Unit resources, provided that such expenditures are directly related to development and implementation of the SEP. In making such certification, the official may rely upon normal company project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. The Permittee/Implementing Party shall provide any additional information requested by the Regional Board staff which is reasonably necessary to verify SEP expenditures. The certification need not address any costs incurred by the Regional Board for oversight.

ii. Certification of Performance of Work

Certification that the SEP has been completed in accordance with the terms of this Stipulated Order. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the

Regional Board to evaluate the completion of the SEP and the costs incurred by the Permittee/Implementing Party.

iii. Certification that Work Performed on SEP Met or Exceeded Requirements of CEQA and other Environmental Laws [Where Applicable]

Certification that that the SEP meets or exceeds the requirements of CEQA and or other environmental laws. Unless the Implementing Party is exempted from compliance with CEQA, the Permittee and/or the Implementing Party shall, before the SEP implementation date, consult with other interested State Agencies regarding potential impacts of the SEP. Other interested State Agencies include, but are not limited to, the California Department of Fish and Game. To ensure compliance with CEQA where necessary, the Permittee and/or the Implementing Party shall provide the Regional Board with the following documents:

- a) Categorical or statutory exemptions; or
- b) Negative Declaration if there are no "significant" impacts; or
- c) Mitigated Negative Declaration if there are potential "significant" impacts but revisions to the project have been made or may be made to avoid or mitigate those potential significant impacts; or
- d) Environmental Impact Report (EIR) if there are "significant" impacts.

2. Third Party Audit

In addition to the certification, within 90 days of the completion of the SEP and at the discretion of the Designated Regional Board Representative which shall be exercised only for cause in consideration of the Permittee's payment in full of the SEP Amount and the nature of the Implementing Party as a government entity, the Permittee shall submit a report prepared by an independent third party(ies) acceptable to the Regional Board staff providing such party(ies)'s professional opinion that Permittee has expended money in the amounts claimed by the Permittee. Such information shall be provided to the Designated Regional Board Representative within three (3) months of the request for audit by the Designated Regional Board Representative. The audit need not address any costs incurred by the Regional Board for oversight.

H. REGIONAL BOARD ACCEPTANCE OF COMPLETED SEP

Upon the Permittee's satisfaction of its obligations under this Stipulated Order, the completion of the SEP and any audit, the Designated Regional Board Representative, with notice to the regional Enforcement Coordinator, shall request that the Regional Board, or the Regional Board's Delegee, issue a "Satisfaction of Order". The issuance of

the Satisfaction of Order shall terminate any further obligations of the Permittee and/or the Implementing Party under this Stipulated Order.

I. FAILURE TO EXPEND ALL SUSPENDED ADMINISTRATIVE CIVIL LIABILITY FUNDS ON THE APPROVED SEP

In the event that Permittee has contributed the SEP Amount to the Implementing Party pursuant to 19.A. and the Implementing Party is not able to demonstrate to the reasonable satisfaction of the Regional Board staff that the entire SEP Amount has been spent for the completed SEP, the Permittee, and/or the Implementing Party on behalf of the Permittee, shall pay the difference between the SEP Amount and the amount the Permittee or the Implementing Party can demonstrate was actually spent on the SEP, as an administrative civil liability.

J. FAILURE TO COMPLETE THE SEP

If the SEP is not fully implemented within the SEP Completion Period required by this Stipulated Order or there has been a material failure to satisfy a Milestone Requirement, Regional Board staff shall issue a Notice of Violation.

As a consequence, Permittee shall be liable to pay the entire Suspended Liability or, some portion thereof. If the Permittee has contributed the entire SEP Amount to the Implementing Party pursuant to 19.A., then the Implementing Party may be held jointly and severally liable along with the Permittee to pay all or a portion of the Suspended Liability. Alternatively, the Implementing Party may be compelled to complete the SEP. The Prosecution Team may act as follows:

1. The Prosecution elects for the payment of the Suspended Liability

The Permittee/Implementing Party might not be entitled to any credit, offset, or reimbursement from the Regional Board for expenditures made on the SEP prior to the date of the "Notice of Violation" by the Regional Board. The amount of the Suspended Liability owed shall be determined via a "Motion for Payment of Suspended Liability" before the Regional Board. In the event that the Permittee/Implementing Party is jointly and severally liable for payment of Suspended Liability, the Regional Board will not include that portion of the SEP amount found by the Regional Board to have been expended in timely manner and in compliance with the attached SEP Workplan, Budget and OWQM Program Plan (Exhibit "C") in the amount of the Suspended Liability owed. Upon a determination by the Regional Board of the amount of the Suspended Liability assessed, the amount owed shall be paid to the State Water Pollution Cleanup and Abatement Account within thirty (30) days after the service of the Regional Board's determination. In addition, the Permittee and/or Implementing Party in the event it is liable for Suspended Liability shall be liable for the Regional Board's reasonable costs of enforcement, including

but not limited to legal costs and expert witness fees. Payment of the assessed amount will satisfy the Permittee's obligations to implement the SEP.

2. Certification of Performance of Work

The Prosecution Team shall file a Motion to Enforce the SEP before the Regional Board against the Permittee and/or the Implementing Party. Upon the identification by the Regional Board of the remaining work of the SEP to be performed, the Permittee agrees that the Regional Board may order the Permittee and/or Implementing Party to perform that work. In addition, the Implementing Party shall be liable for the Regional Board's reasonable costs of enforcement, including but not limited to legal costs and expert witness fees.

3. Claims between the Permittee and the Implementing Party

Any claims for reimbursement, costs (other than the payment by the Permittee of the SEP Amount pursuant to paragraph 19. A above), or disputes between the Permittee and the Implementing Party are outside the scope of this Stipulated Order and should be handled as between the Permittee and the Implementing Party although the obligations of the Permittee and the Implementing Party as set forth in this Stipulated Order may be considered in any such disagreement.

K. REGIONAL BOARD IS NOT LIABLE

Neither the Regional Board members nor the Regional Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by Permittee (or the Implementing Party where applicable), its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the Regional Board, its members or staff be held as parties to or guarantors of any contract entered into by Permittee, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

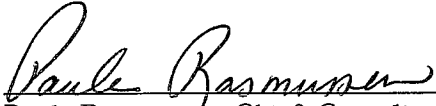
The Permittee and the Implementing Party covenant not to sue or pursue any administrative or civil claim or claims against any State Agency or the State of California, or their officers, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by the ACL, this Stipulated Order or the SEP. This provision does not preclude Permittee and/or the Implementing Party from opposing a Notice of Violation or Motion brought under paragraph 19.J.

20. The Permittee has been informed of the rights provided by CWC section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Board prior to the adoption of the Stipulated Order.

21. The Permittee hereby waives its right to petition the Regional Board's adoption of the Stipulated Order for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
22. All approvals and decisions of the Regional Board under the terms of this Order shall be communicated to the Permittee in writing. No oral advice, guidance, suggestions or comments by employees or officials of the Regional Board regarding submissions or notices shall be construed to relieve the Permittee of its obligation to obtain any final written approval required by this Stipulated Order.
23. This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.
24. Pursuant to CWC § 13320, an aggrieved person may seek review of this Order by filing a petition within 30 days of the date of adoption of this Order by the Regional Water Board with the State Water Resources Control Board (SWRCB). *The petition must be sent to the SWRCB, PO Box 100, Sacramento, CA 95812-0100.*

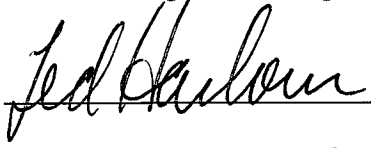
It is so stipulated:

California Regional Water Quality Control Board Prosecution Team,
Los Angeles Region

By: 
Paula Rasmussen, Chief, Compliance and Enforcement Section
Los Angeles Regional Water Quality Control Board ("Chief Prosecutor")

Date: July 27, 2011

D.R. Horton Los Angeles Holding Company, Inc.

By: 
Title: Senior Vice President

Date: June 29, 2011

Ventura County Environmental Health Division, Implementing Party

By: William C. Stett

Title: Director, Env. Health Division

Date: July 21, 2011

IT IS HEREBY ORDERED that, pursuant to § 13323 of the CWC, the Permittee shall make a cash payment of \$172,500 (payable to the State Water Pollution Cleanup and Abatement Account) no later than thirty days after the date of issuance of this Order, or submit the partial payment and contribution to a SEP as described above.

Any portion of the liability that is not suspended shall be paid to the CAA. Failure to pay any required monetary assessment on a timely basis will cancel the provisions for suspended enalties for SEPs and the suspended amounts will be due and payable.

In the event that the Permittee fails to comply with the requirements of this Order on Settlement Offer No. R4-2008-0044-M the Executive Officer is authorized to refer this matter to the Office of Attorney General for enforcement.

The terms of the foregoing Stipulation are incorporated into this Order.

I, Samuel Unger, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board on _____, 2011.

Samuel Unger, P.E.
Executive Officer

Date

Exhibits A through C.